In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, WC Docket No. 18-155

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BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communication Corp., Northern Valley Communications, LLC, and Louisa Communications (collectively "CLECs")

Introduction

- **The Competitive Local Exchange Carriers ("CLECs")** are rural carriers that provide telephone, Internet, cellular, cable, and many other services to rural citizens and businesses. They also participate in access stimulation.
  - BTC, Inc. d/b/a Western Iowa Networks (Iowa)
  - Goldfield Access Network (Iowa)
  - Great Lakes Communication Corp. (Iowa)
  - Louisa Communications (Iowa)
  - Northern Valley Communications, LLC (South Dakota)

Introduction

- **November 2011 – *Connect America Fund Order*:**
  - FCC totally reforms ICC and access charge regime, establishing bill-and-keep as the "ultimate end state" and transitioning terminating access end office rates to zero. Originating access rates and terminating rates for tandem switching remain unchanged.
- **Post-*Connect America Fund Order*:**
  - Access-stimulating CLECs accept substantially reduced access charge rates, determining that doing so presents the best opportunity to continue to provide enhanced broadband services to rural end users and provide free conference calling services to millions of Americans.
- **October 2017 – *Refreshing the ICC Record*:**
  - FCC seeks to refresh the record on intercarrier compensation and inquires about further reductions in access charges. Commenters implore the FCC to avoid further reforms until it gathers the necessary data and evidence. The record remains open.
- **June 2018 – *Access Stimulation NPRM*:**
  - Without new, post-2011 data and evidence, FCC proposes sweeping reforms at the behest of IXCs' unsupported allegations that are contrary to FCC precedent and its goal of a bill-and-keep end state.

THE NPRM CONTAINS UNSUBSTANTIATED ALLEGATIONS THAT CONTRADICT REALITY

FCC & IXC Assumption

FCC & IXC Claim:

- The FCC and IXCs justify the proposed reforms upon a belief that consumers will benefit because IXCs will be able to offer cheaper long-distance rates and plans.

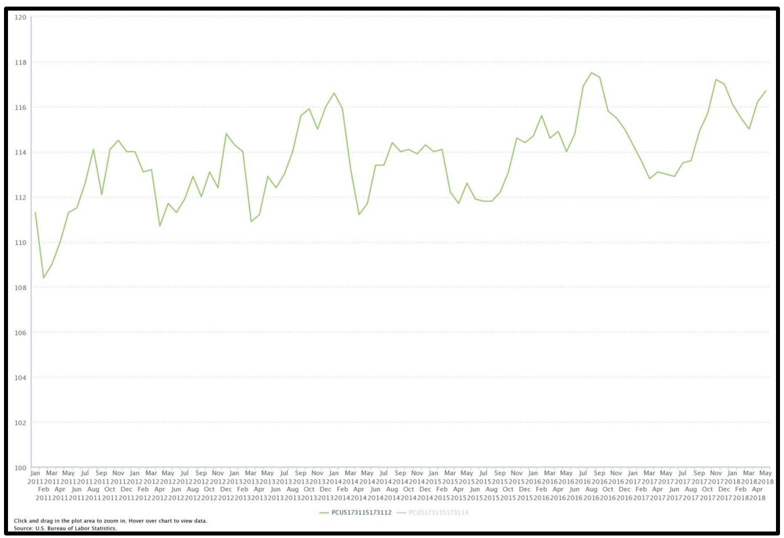
CLECs' Response:

- Since the *Connect America Fund Order* was implemented, the FCC or IXCs have presented **no evidence** showing the FCC's reforms caused IXCs to lower the price consumers pay for long-distance service.
- In fact, the available evidence shows that **consumers have been paying more for long-distance service** since 2011.
- And even if savings were passed on to consumers, **any savings would be less than a penny per month** for each consumer.

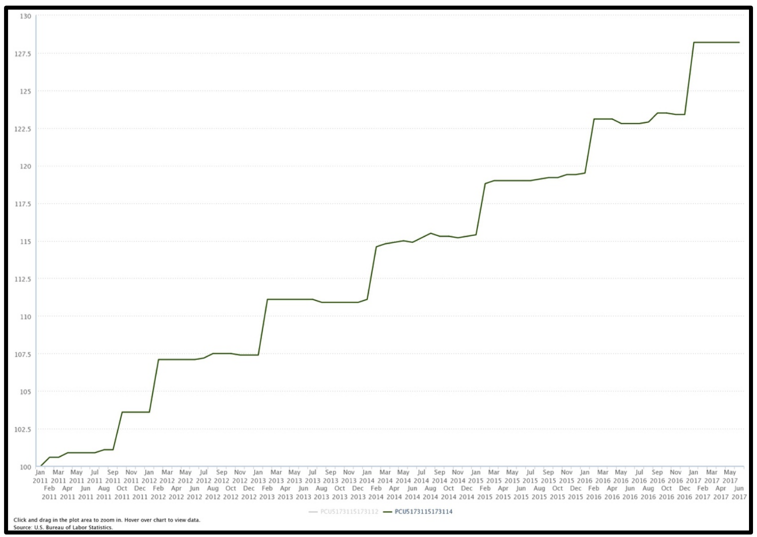
IXCs are Not Passing on Savings to Consumers

- Despite IXCs paying reduced access charge rates, the Producer Price Index ("PPI") shows that consumers are paying ***<u>more</u>*** for long-distance service than they did in 2011:

PPI for Wired Telecommunications ('11-'18):



PPI for All Distance Service ('11-'18):



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IXCs are Not Passing on Savings to Consumers

- Overall, the price for residential wire service rose 24% between 2011 and 2017:

	Base Period	July 2011	Dec. 2011	Dec. 2012	Dec. 2013	Dec. 2014	Dec. 2015	Dec. 2016
Bundled Wired Telecom. Access Services	Dec. 2011	n/a	100.0	99.5	100.5	101.2	103.7	105.1
Bundled Access Services	Dec. 2011	n/a	100.0	99.6	100.6	101.3	103.8	105.2
Internet Access Services	March 2009	97.6	97.7	97.6	97.6	98.1	97.6	97.6
Cellular & Other Wireless	March 2009	90.5	89.5	87.9	87.1	82.6	74.2	69.2
Residential Wired	June 2009	106.5	107.9	111.4	118.5	123.6	127.8	133.0
Business Wired	June 2009	96.5	96.1	96.4	96.0	96.1	96.5	95.8

Any Savings Created Here Could Not Lower Consumer Costs

- Even using AT&T's assertion that "the industry and consumers continue to be burdened by wasteful schemes … with a resulting cost of $80 million annually," the math does not support the FCC's and IXCs' assertion that new reforms will result in substantially cheaper long-distance plans:
  - As an initial matter, AT&T has not taken into consideration its self-help withholding with regard to 75% of its access stimulation traffic, meaning its cost estimate should be reduced by at least ***$21.84 million***.
  - Moreover, AT&T's estimate does not take into consideration the ***$5.1 million*** in savings that will result from the FCC's *Aureon Tariff Order*.
  - At most, then, industry-wide access-stimulated related expenses total ***$53 million*** per year.
- Distributing $53 million in savings among 462,683,000 wireline and wireless subscribers* means each subscribers' long-distance fees will be reduced by ***$0.11 cents per year***. That's ***less than a penny per month in savings***.

* According to FCC data, in December 2016 there were 341,352,000 mobile line and 121,331,000 wireline end user switched access lines and interconnected VoIP subscriptions.

FCC & IXC Assumption

FCC & IXC Claim:

- The Commission justifies the proposed reforms on a belief that it "has long recognized that arbitrage opportunities in the intercarrier compensation (ICC) system harm consumers."

CLECs' Response:

- The Commission has provided **no evidence** since 2011 to support its allegations of consumer harm.
- Indeed, **consumers nationwide benefit from access stimulation**, and the harm that would result from the FCC's proposed rule changes would be far reaching and drastic.

All Consumers Benefit from Access Stimulation

Consumers Nationwide Benefit:

- On a monthly basis, more than ***<u>5 million</u>*** consumers across the country use the conference calling & audio broadcasting services hosted by just these CLECs. The number is probably larger if all others are taken into consideration.
- These consumers include:
  - **Nonprofit Organizations**
  - **Small Businesses**
  - **Religious Institutions**
  - **Political Campaigns**
  - **Government Agencies**
  - **Immigrants**

Rural Consumers Benefit:

- By servicing high volume service provider customers, rural CLECs are able to provide their local residential & business customers with enhanced services:
  - **Northern Valley** is investing in fiber and other broadband capacity to ensure rural South Dakotans are not left behind in the digital divide. It is a rural broadband experiment winner and has received multiple service awards from its CLEC communities.
  - **Western Iowa Networks** is offering high speed Internet and local phone service to an expanded footprint of customers and is connecting with neighboring companies to help them offer similar broadband services to their customers.
  - **Great Lakes** is providing broadband access to 2,000 Iowa residences & businesses in three counties that would otherwise still be waiting for access. It has been labeled a key source of innovation in Northwest Iowa.

Consumers Would Be Harmed by Further Reform

- By eliminating free conference calling & audio broadcasting services, consumers would be forced to pay for a conferencing service on top of paying for long-distance service. Thus, under the FCC's proposed rules:
  - A church that simulcasts its 60-minute church service to the elderly and infirm would incur a cost per-user to hear the service. If 500 people listen in, the church could incur additional charges of ***<u>$1,170 each Sunday</u>***.*
  - A political campaign gathering together 10,000 supporters across the country for a 45-minute discussion on "get out the vote efforts" could have to pay ***<u>$17,550</u>*** to host ***<u>a single conference call</u>***, even while each campaign volunteer still has to pay his or her long-distance bill.*
  - At a volume of 2 billion minutes per year (the FCC's 2011 estimate), ***<u>consumers save an estimated $78 million per year</u>*** by being able to use their long-distance phone plans to access the services hosted by rural CLECs.

* These calculations assume a rate of $0.039 per minute, which is the rate AT&T currently charges when the consumer uses his or her long-distance plan to participate in AT&T's conferencing service.

FCC & IXC Assumption

FCC & IXC Claim:

- The Commission justifies the proposed reforms by claiming that, when IXC customers use free conference calling services, IXCs are "harmed by excessive transport mileage and high usage-based rates associated with access-stimulating LECs."

CLECs' Response:

- The FCC & IXCs present **no evidence** to support their allegations of harm, and based upon the evidence they cited in 2011, their **concerns are over-exaggerated** by as much as 3200%.
- Indeed, rather than being harmed by access stimulation, the available evidence shows that **IXCs make a great deal of money off of the practice**.

The FCC Over-Exaggerates the Rates IXCs Pay

FCC Comments:

- While no post-2011 evidence is provided, the FCC cites to evidence obtained during the *Connect America Fund Order* proceedings. This includes:
  - A TEOCO estimate that "the total cost of access stimulation to IXCs has been more than $2.3 billion over the past five years"; and
  - A Verizon statement suggesting that it alone is billed for two billion minutes of access stimulation traffic per year and that access stimulation costs IXCs between $330 & $440 million per year.

CLECs' Response:

- The FCC or IXCs present **no new evidence** showing these numbers are still relevant.
- Even if we use these numbers, the rates paid by IXCs for access stimulation traffic are **far less** than they claim:
  - Using Verizon's estimate of 2 billion minutes of traffic, its alleged access stimulation rate would be between ***$0.165 and $0.22 per minute***.
  - Today, the CLECs average composite tariffed rate for access stimulation traffic is ***less than $0.005 per minute***.
  - Thus, if Verizon's estimate is accurate, its alleged 2011 rates are approximately ***3,200% higher*** than what the CLECs actually charge today.

IXCs Benefit Financially from Access Stimulation

- In *Northern Valley Communications, LLC v. AT&T*, No. 1:14-cv-01018, AT&T was required to turn over revenue and cost data, allowing Northern Valley to conduct an in-depth analysis of how IXCs like AT&T are affected by access stimulation. According to that analysis:
  - Between March 2013 to June 2016, AT&T collected ***<u>$50 million</u>*** for Northern Valley-bound traffic, producing a ***<u>net profit of $30 million</u>*** for AT&T.
  - AT&T generated ***<u>$8.2 million in revenue</u>*** alone from its wholesale traffic to Northern Valley.
- Thus, the claims made by the FCC and IXCs alleging IXCs are harmed by delivering traffic to access-stimulating CLECs is entirely contradicted by the evidence. This would be even more concretely proven if the CLECs were able to obtain revenue and cost data from other IXCs.

FCC & IXC Assumption

FCC & IXC Claim:

- As an additional rationale for its proposed reforms, the FCC claims that the current access stimulation regime continues to undermine broadband deployment.

CLECs' Response:

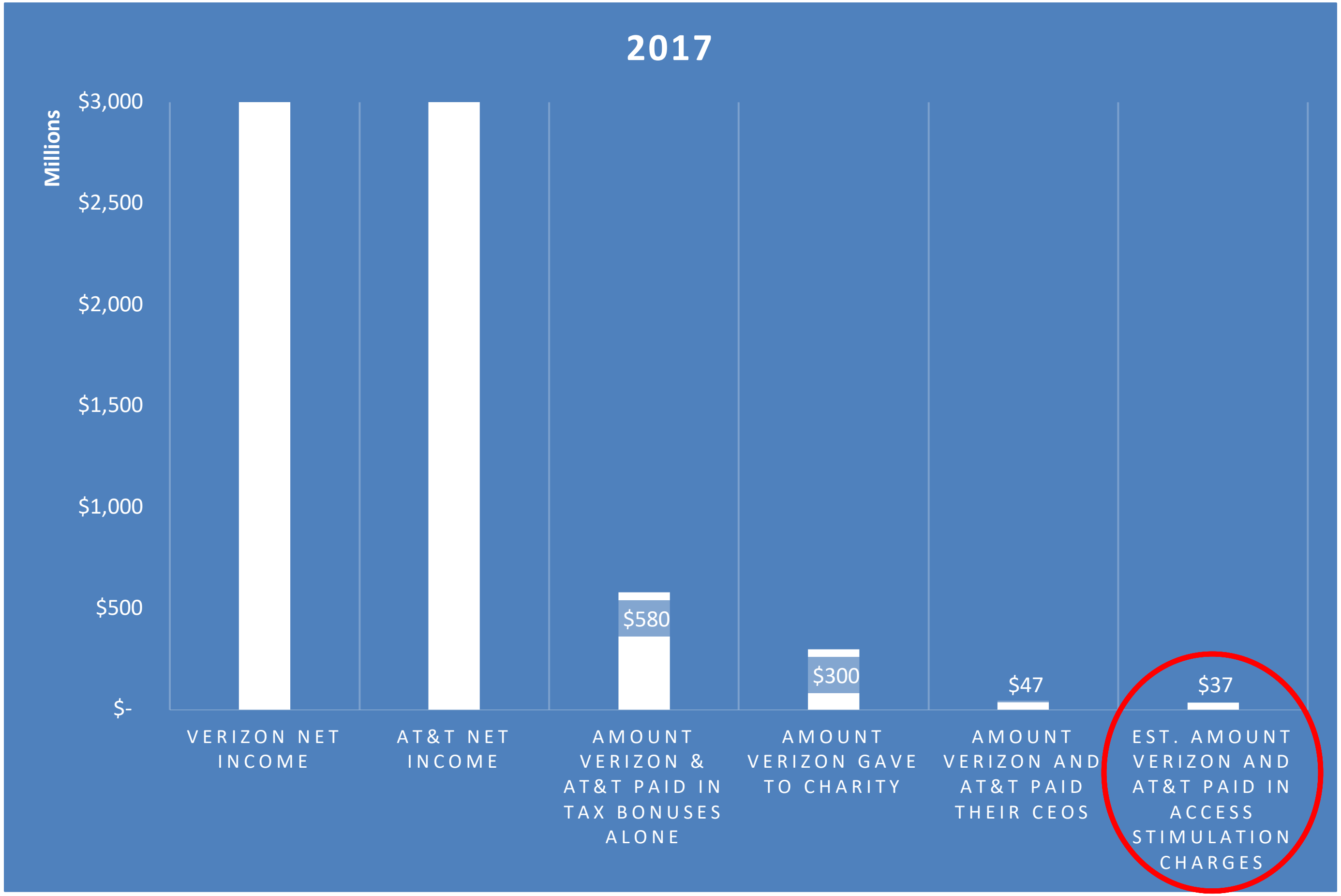
- There is **no evidence** from which one could conclude that the payment of access charges by IXCs is material to their ability to invest in broadband.
- Even if the FCC adopted its reforms, the **potential savings are not material enough** to invest in broadband.
- The FCC's proposals would **negatively impact broadband deployment**, as they would deprive access-stimulating CLECs of being able to invest in broadband.

IXCs’ Access Stimulation Charges are Not Material to Their Bottom Lines or Ability to Provide Broadband

- In 2017, AT&T and Verizon gave away a combined total of ***$880 million*** in bonuses, stocks, and charitable contributions.
- In 2017, AT&T and Verizon combined likely paid no more than ***$37 million*** in access charges related to access stimulation.*
- With AT&T’s & Verizon’s net incomes each surpassing ***$3 billion*** in 2017, their access-stimulation-related expenses are merely a drop in the bucket.

* This estimate assumes the volume of access stimulation traffic for Verizon remained unchanged from 2011 at 2 billion minutes and that Verizon has about 28% market share and AT&T has about 36.4% market share. It also assumed the avg. cost-per-minute for terminating traffic to IA & SD CLECs has been reduced to $0.014 cents (including CEA fees) and that AT&T withheld payment on 75% of the access charges it was billed in 2017 (a conservative estimate).

IXCs’ Access Stimulation Charges are Not Material to Their Bottom Lines or Ability to Provide Broadband



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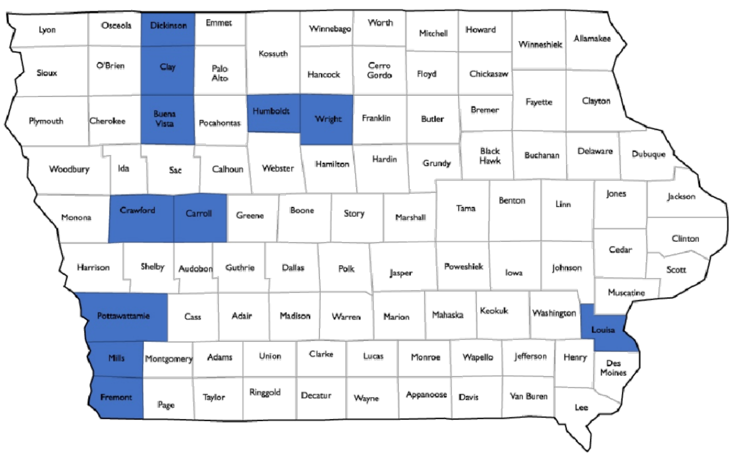
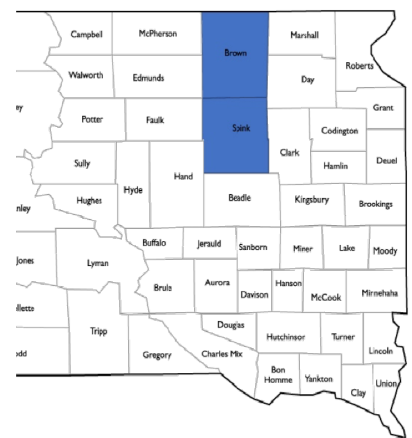
Access-Stimulating CLECs Invest Millions in Broadband Deployment

- Unlike IXCs, access-stimulating CLECs do invest in broadband, and the access stimulation marketplace has been the key motivator for this investment.
- Since the 2011 *Connect America Fund Order* was adopted, the CLECs have invested ***$47 million*** in broadband deployment in rural areas that otherwise would have gone unserved:



Iowa counties with access-stimulation supported broadband



South Dakota counties with access-stimulation supported broadband

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Further Reforms Will Negatively Impact Broadband Deployment in Rural Areas

- As Chairman Pai recently observed, "only 2% of Americans lack access to high-speed fixed service. **In rural areas, 28% go without**."
- Access-stimulating CLECs have been able to **expand access to broadband** in underserved and unserved markets and likely will not be able to if their means for doing so are eliminated.
- IXCs like AT&T and Verizon have provided **no evidence** showing they would invest in these rural communities if reforms are adopted.

FCC & IXC Assumption

FCC Comment:

- In proposing its new reforms, the FCC states that, "in 2011, the Commission found access stimulation to be the most widespread access arbitrage scheme. It appears that continues to be the case today."

CLECs' Response:

- The FCC has presented **no evidence** showing that access stimulation has become more widespread since 2011.
- Contrary to the FCC's claim, there has actually been a **substantial decline** in the volume of access stimulation traffic billed pursuant to CLEC tariffs since 2011.

Access Stimulation Traffic Carried Pursuant to Tariff Has Substantially Declined

- Since 2011, access-stimulating CLECs have voluntarily worked with IXCs to transition traffic to IP-interconnections.

- As a result, as much as ***80%*** of today's calls to rural CLECs reach those CLECs through voluntarily negotiated IP-connections, rather than through traditional TDM connections.

- Thus, the evidence shows that IXCs are using alternative commercially-negotiated arrangements instead of tariff-based arrangements, just as the FCC said should occur during the transition to a bill-and-keep regime.

- Because these are commercially-negotiated agreements, CLECs have the right to enter into agreements with carriers that provide a high-quality service and are not a collection risk. Carriers like AT&T, who consistently abuse rural CLECs, cost CLECs both time and money to pursue collection actions.

FCC & IXC Assumption

FCC & IXC Comments:

- In applying the "access stimulation" definition in the NPRM, the FCC claims that access-stimulating CLECs have "relatively-high switched access rates."
- The IXCs claim that "some CLECs seek to benchmark to a high-priced incumbent LEC" while others "locate [themselves] in a rural area where the maximum permissible terminating access rate is high."

CLECs' Response:

- The FCC fails to explain how its use of the phrase "relatively-high switched access rates" is applicable to its "access stimulation" definition given the FCC's 2011 decision to require CLECs to benchmark their rates to the lowest price-cap LEC in the state.
- In reality, the **CLECs' benchmarked rates are not high** at all and are similar to (if not less than) the rates charged by the nation's largest ILECs.

Access-Stimulating CLEC Benchmark Rates are Compatible with Other Large Carriers

- CenturyLink's rates (used by Iowa & South Dakota CLECs) are compatible with other large carriers, like PacBell, the largest price-cap ILEC in the country that had nearly 6 billion minutes of use in 2017.

Pacific Bell Telephone Co.
Tariff FCC No. 1

Rate Element	Direction	Zone	Rate
Transport Termination, Over 0 miles	Term to 3rd Party	Zone 3	0.00024
Transport Facility per Mile, Over 0 miles	Term to 3rd Party	Zone 3	0.000044
Tandem Switching	Term to 3rd Party	Zone 3	0.00175

CenturyLink
Tariff FCC No. 11, Section 6

Rate Element	Direction	Zone	Rate
Transport Termination	Term to 3rd Party	N/A	0.00024
Transport Facility per Mile	Term to 3rd Party	N/A	0.00003
Tandem Switching	Term to 3rd Party	N/A	0.002252

- Thus, the rates charged by CLECs are at or below the rates charged by AT&T's affiliate, which handles far larger traffic volumes.

FCC & IXC Assumption

FCC & IXC Comments:

- The FCC justifies its proposed reforms upon the IXCs' repeated claims that they have requested and been denied the ability to install direct connections by access-stimulating CLECs.

CLECs' Response:

- The IXCs have **never offered to install true direct connections** at access-stimulating CLEC facilities at their own expense and without preconditions.
- As the record reveals, **IXCs do not even want to enter into true direct connection arrangements**, but rather want to use the proposal as a negotiation and withholding tool.

IXCs' Requests for True Direct Connections Is A Myth & Ruse

IXCs Are Not Denied Direct Connects:

Northern Valley v. AT&T Corp.

- Court held that "the record is unclear whether AT&T offered to install a direct trunk at its own expense at Northern Valley, or instead negotiated for or demanded that Northern Valley do so or pay for any costs of doing so."
- Court concluded AT&T failed to show it ever offered to install a direct connection at its own cost, rather than force Northern Valley to bear the costs for AT&T.

IXCs Use Direct Connect Proposition as Leverage:

***Northern Valley-Inteliquent Dispute*:**

- In mid-2017, Inteliquent begins withholding payment, expressing an interest in a direct connection.
- Later, Inteliquent admits it has no intention of installing facilities to Northern Valley.
- Inteliquent admits that it is withholding payment in order to create bargaining pressure in negotiations for a lower rate.

Other CLECs have similar stories to share.

THE PROPOSED RULES ARE UNJUSTLY & UNREASONABLY DISCRIMINATORY

The Reforms Will Discriminate Against Minority Groups

- Through its proposed reforms, the FCC & IXCs seek to:
    1. Adopt different prices for the delivery of access stimulation traffic through CEA providers; and thereby
    2. Discriminate against rural CLECs based on the type and volume of traffic they receive.
- These proposed reforms violate:
    - The FCC's longstanding rejection of discriminatory treatment to assess stimulation traffic:

> ***Connect America Fund Order*, ¶ 692:**
>
> [W]e reject the suggestion that we detariff competitive LEC access charges if they meet the access stimulation definition.

- Sections 201(b) and 202(a) of the Communications Act:

> All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.*

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.**

* 47 U.S.C. § 201(b).
** 47 U.S.C. § 202(a).

THE PROPOSED RULES ARE VAGUE

The NPRM's Discussion Regarding "Financial Responsibility" is Vague & Incomplete

10. *Revised Financial Responsibility*. We seek comment on the first prong of our proposal and the impact it will have on access stimulation schemes. Under this prong, an access-stimulating LEC that does not offer direct connections to IXCs would bear all financial responsibility for applicable intermediate access provider terminating charges normally assessed to an IXC (from the point of indirect interconnection to the access-stimulating LEC's end office or functional equivalent), and would be prohibited from assessing transport charges for any portion of transport between the intermediate access provider and the LEC's end office or functional equivalent that the LEC, itself, provides. What are the advantages of placing the financial responsibility for delivery of traffic to its end office, or functional equivalent, on the access-stimulating LEC? Are there disadvantages?

Major Concerns Regarding Proposal #1

Assumptions:

1. There is a single intermediate access-provider delivering traffic to any particular access-stimulating CLEC; and

2. This intermediate provider has a single rate that it uniformly assesses on IXCs for delivering traffic to access-stimulating CLECs.

Reality:

1. Each of the CLECs have in place more than 1 intermediate provider that delivers long-distance traffic to it and are connected to the FCC-sanctioned CEA provider for the delivery of tariffed TDM traffic.

2. In many cases, each of the CLECs have more than one connection to an IP provider, who deliver traffic on commercially-negotiated terms.

- Thus, the FCC's proposal is:
  - **Vague**, because it does not acknowledge that more than 1 carrier may qualify as the intermediate provider; and
  - **Incomplete**, because it fails to address which provider is relevant to the issue of financial responsibility and fails to specify whether a CLEC that has multiple interconnecting carriers is entitled to specify which of those carriers will carry the traffic to the CLEC.

Major Concerns Regarding Proposal #1

- Other critical information is missing from the proposal:
  - How should financial responsibility be split when an intermediate provider provides the functional equivalent of tandem switching and tandem-switched transport and also provides additional services in delivering the IXCs' calls?
  - Where CEA providers are acting as the intermediate provider, may they charge different IXCs different rates for delivering traffic to access-stimulating CLECs?
- Even the IXCs have concerns with the proposal:
  - **AT&T** finds "the definition of the phrase 'intermediate access provider' [to be] vague," as the definition in turn fails to actually define several key terms, including the term "final interexchange carrier," and does not explain whether wholesale-trafficking IXCs also fall within this definition.
  - **Verizon** is concerned about "implementation issues," as "[c]urrently, there are no established mechanisms for intermediate access providers to bill terminating tandem and transit charges to terminating LECs instead of billing IXCs."
  - **SDN** notes that "the Commission's proposal … will place an undue burden on intermediate carriers … and raises a number of unresolved issues."

The NPRM's "Direct Connection" Proposal is Equally Flawed

13. *Direct Connection*. Commenters have argued that the volume of traffic bound for access-stimulating LECs justifies direct connections, but allege that access-stimulating LECs currently refuse to accept such connections.[23] Direct connections do not pass through intermediate switches and are offered on a capacity basis at monthly-recurring rates, as opposed to a per-MOU rate. If there is a sufficient volume of traffic, the monthly charges for direct connections can often be substantially lower than per-MOU rates for an equivalent amount of traffic.[24] As the second prong of our proposal, we propose to provide access-stimulating LECs the option to offer to connect directly to the IXC or an intermediate access provider of the IXC's choice[25] as an alternative to bearing financial responsibility for intermediate access provider charges and ceasing to bill their own transport charges. Under this proposal, IXCs would have the option of selecting an intermediate access provider that would bill the IXC for transport to the access-stimulating LEC on a dedicated basis. We seek comment on this proposal and on how best to implement it. We note that as a result of this election, an IXC would have the choice to connect with an access-stimulating LEC directly or indirectly through the LEC's existing intermediate access provider or another IXC directly connecting to the access-stimulating LEC.

Major Concerns Regarding Proposal #2

Commission's Proposal:

- The Commission suggests that a "direct connection" would include an arrangement where an IXC connects to an access-stimulating LEC through "an intermediate provider of the IXC's choice."

Reality:

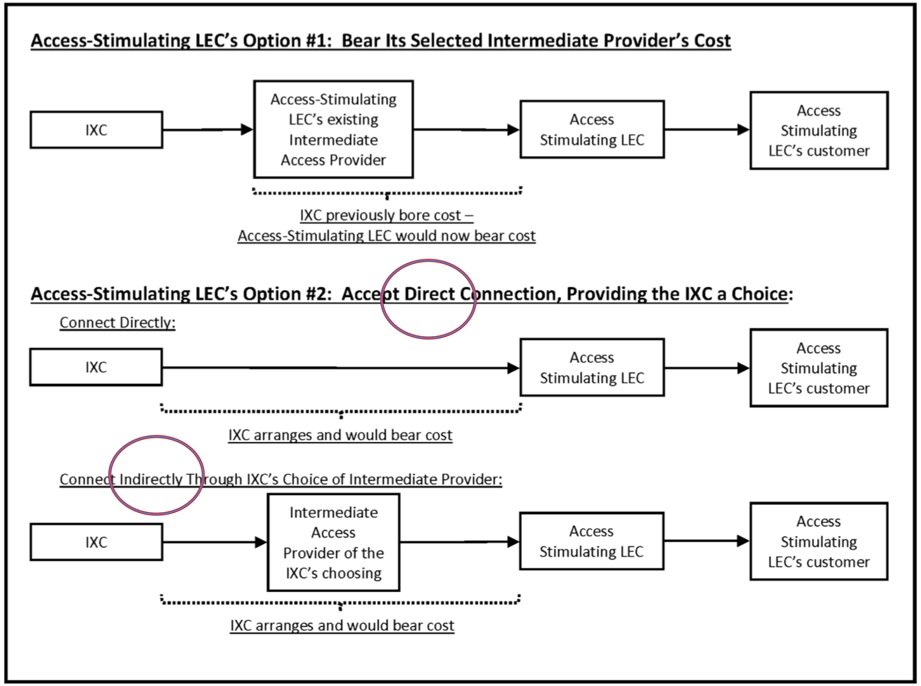
- "Direct connections" are arrangements where two carriers are **connected to each other**.
- While, "indirect connections" are "interconnection[s] of two carriers' network, which are not directly connected to each other, via a third carrier's network, to which the two carriers are each directly connected."*

- Thus, the FCC's proposal fails to appropriately apply the "direct connection" term, for as soon as it inserts the words "an intermediate access provider," it is **<u>no longer discussing a direct connection</u>**.

* Definition obtained from *Newton's Telecom Dictionary* (31st ed. 2018).

Major Concerns Regarding Proposal #2

- The FCC **<u>does</u>** understand the difference between the "direct" and "indirect" terms, as the diagram it uses to explain the "direct connection" proposal acknowledges that connections through an intermediate provider would require the IXC to "[c]onnect *indirectly*" to the access-stimulating LEC:



Major Concerns Regarding Proposal #2

- Other critical information is missing from the proposal:
  - What obligations does a CLEC have to abide by in facilitating a direct connection for the IXC's benefit?
    - Must the IXC commit to installing the direct connection in writing?
    - May the IXC place any preconditions upon the offer to install a direct connection?
  - In accepting traffic from "an intermediate access provider of the IXC's choice," is the CLEC required to accept an IP-interconnection, as opposed to a TDM interconnection, if the IXC selects such a provider?
    - If so, does the FCC have the power to mandate and compel IP-interconnections without a notice of proposed rulemaking?
  - In accepting traffic from "an intermediate access provider of the IXC's choice," is the CLEC required to accept "virtual direct connections", whereby the CLEC is handed the traffic in a distant state and forced to incur the expense of hauling it back to rural America?

IXCs DO NOT EVEN WANT THE COMMISSION TO PROVIDE A DIRECT CONNECTION OPTION

IXCs Have Suddenly Flipped Their Position on Direct Connections

AT&T Yesterday:

- ***AT&T Corp. v. Iowa Network Services*:**

[T]he evidence clearly shows that other methods of routing access stimulation traffic to the access stimulating CLEC's end office switch are much more efficient … and therefore more beneficial to long distance carriers and their customers. **Perhaps the most efficient method of routing such traffic (given the enormous call volumes at issue) would be via a direct trunking arrangement from the IXC to the access stimulating CLEC's end office switch.**

- ***AT&T Refresh the Record Comments*:**

The access stimulation schemes that have endured often involve situations in which carriers have refused direct connections…. [To resolve this issue, the Commission should] issue rules making clear that the sending carrier, which has the financial responsibility to carry the traffic to the network edge, has the right to select how to transport the traffic to the edge, *i.e.*, which route to take, and **whether to do so with its own facilities**.

AT&T Today:

- ***AT&T Comments*:**

The second prong of the Commission's proposed rule gives the *access stimulating LEC* the option to avoid responsibility for the costs of transporting the access stimulation traffic by offering interexchange carriers the ability to directly connect to the LEC's network. **This prong will … make the current situation even worse**….

It is extremely burdensome to build direct connections into some rural areas to directly terminate traffic.

Further, this direct connect option offers no protection in situations where the end office housing the conference and chat equipment is located in a remote area that is not readily accessible via any network other than either the network controlled by the access stimulating LEC or an intermediate access provider working with the access stimulating LEC. **In fact, this proposal would … mak[e] the current situation even worse**.

IXCs Have Suddenly Flipped Their Position on Direct Connections

- Other IXCs made statements similar to AT&T's in their own comments:
  - **<u>CenturyLink</u>** notes that it would not take advantage of the FCC's direct connection proposal because "[i]n most cases, the end offices associated with access stimulation are in remote/rural areas, [and] it is very likely that the cost to provision or lease dedicated transport to establish the direct connection would also be high."
  - **<u>Sprint</u>** requested that the FCC's direct connection proposal be scrapped because the proposal "will not eliminate costly transport expenses associated with interconnection at a distant LEC end office; and may be of only limited feasibility in rural areas."
  - **<u>Verizon</u>** claims that it is only interested in indirect interconnection arrangements through an "intermediate provider," but never mentions a possibility of entering into direct connection arrangements.

IXCs' Requests for A Direct Connection Proposal Were A Ruse

- IXCs never really wanted the FCC to adopt the direct connection proposal, and instead wanted the direct connection argument available so they could further their self-help withholding practices:

> What is common is that **originating carriers use the prospect of direct connections as a negotiation tool** – not an actual plan to implement direct[] connections….
>
> When one gets underneath the concerns of originating carriers you are left with the feeling that, in spite of their protests to the contrary, **they simply would rather not have to bother with direct connect relationships that, to them are "out in the middle of nowhere.**"*

- The FCC should take note of the IXCs' contradictory arguments and refuse to waste the agency's time, energy, and resources on a proposal that IXCs will never take advantage of.

* *See* Comments of HD Tandem at 10, 12.

AT&T's PROPOSAL IS INCONSISTENT WITH THE FCC'S BILL-AND-KEEP FRAMEWORK

AT&T's Proposal

- AT&T now asks the Commission to "require[e] the access stimulating LEC[s] to bear the costs of transporting [access stimulation] calls from the IXC's network to the LEC's end office switch":

> [U]nder this prong, an access stimulating LEC would be bound either to carry the traffic itself via a direct connection, or to obtain an indirect connection **and pay an intermediate access provider to carry the traffic from the IXC's point of presence to access stimulation LEC's facility**…. To the extant that, under the first prong, an access stimulating LEC seeks to avoid its obligation to pay for transport by blocking calls, **nothing in the Act or Commission's rules requires the IXC to ensure the completion of the calls beyond tendering them at its point of presence.***

*AT&T Comments at 11 n.24.

AT&T's Proposal Is Inconsistent with the FCC's Goal of Establishing A Bill-and-Keep End State

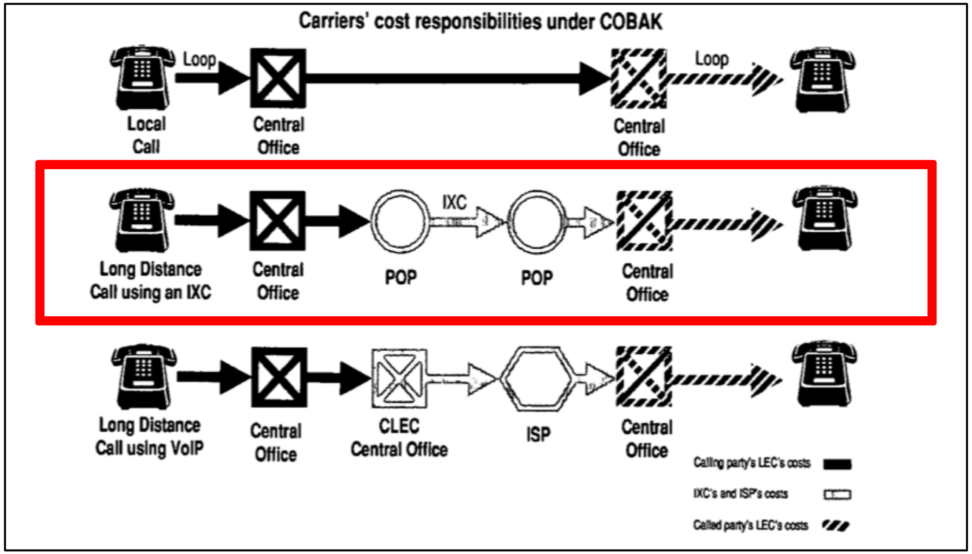
- When the FCC adopted the *Connect America Fund Order*, it justified moving away from the traditional access charge regime by relying on Patrick DeGraba's theory of a "unified approach to interconnection pricing," known as "central office bill-and-keep," or "COBAK."
- While COBAK would "apply to interconnecting arrangements between all types of carriers that interconnect with the local circuit-switched network," it would "**not … eliminate access charges for terminating transport** if the IXC uses the LEC's terminating transport facilities," because this transport "is what long-distance customers pay their long distance carriers to do.
- Thus, COBAK relies on 2 key rules:

Rule 1: No carrier may recover any costs of its customers' local access facilities from an interconnecting carrier.

Rule 2A: For interexchange calls, the calling party's local network is responsible for delivering the call to the POP of the calling party's IXC; the calling party's IXC is then responsible for delivering the call to the called party's central office.

AT&T’s Proposal Is Inconsistent with the FCC’s Goal of Establishing A Bill-and-Keep End State

- As DeGraba’s depiction of the desired end state for COBAK makes clear, contrary to AT&T’s proposal, the **IXC** – *not* the CLEC – is to be made **responsible** for the costs of transporting the call between the IXC’s POP and the LEC’s central office:



FINAL THOUGHTS

The Regulation of Terminating Traffic Has Reached the Desired End State

DeGraba's Rules for Terminating Traffic:

- **Rule 1:** No carrier may recover any costs of its customers' local access facilities from an interconnecting carrier.
- **Rule 2A:** The calling party's IXC is [] responsible for delivering the call to the called party's central office.

Today's Access Charge Regime:

- ✓ End office access charges were completely eliminated via the FCC's *Connect America Fund Order*.
- ✓ Under the current access charge regime, when the CLECs or CEA providers carry traffic from the IXC's POP to the CLECs' central offices, the IXCs compensate the CLECs and CEA providers for that service.

By Clarifying the Appropriate Rates for CEA Providers, the FCC Provided Sufficient Relief

- The FCC likely received complaints about access stimulation traffic because carriers lacked clarity regarding how CEA providers should establish their rates and handle access-stimulation traffic.
- The *Aureon Tariff Order* has resolved these issues by:
  - Confirming that CEA providers, like CLECs, must benchmark their rates to the competing ILEC, which in Iowa and South Dakota is CenturyLink;
  - Requiring CEA providers' rates to not exceed the lower of: (a) the rate cap instituted in the *Connect America Fund Order*; (b) the rate of the competing ILEC; or (c) its cost-based rate derived pursuant to Section 61.38 of the FCC's rules.
- As a result of the *Aureon Tariff Order*, the INS rate will be reduced to $0.005634/mou, which produces a savings of ***<u>$0.002556/mou</u>*** for IXCs and potentially producing over ***<u>$5 million</u>*** in further IXC savings.*

* Potential savings based on a traffic volume estimate of 2 billion minutes, as the FCC concluded in 2011.

If Further Reform is Necessary, So Is Further Research, Data, and Evidence

- The IXCs have demanded reforms by misleading the FCC through their anecdotes, hypothesis, and hysteria, rather than current data and evidence:

Unsubstantiated Allegations	Available Evidence Shows
IXCs will pass on further savings to consumers.	IXCs have pocketed savings as long-distance plans continue to rise in price.
Consumers are harmed by access stimulation.	Consumers nationwide save approximately $78 million per year using their long-distance plans to access free conferencing and similar services, and because of these services rural CLECs are able to assist underserved rural networks.
IXCs are harmed by paying access charges at rates established by the *Connect America Fund Order*.	IXCs profit substantially from delivering both wholesale and retain access stimulation traffic.
Access stimulation deters broadband deployment.	Thanks to access stimulation, rural CLECs have invested more than $47 million in broadband deployment since 2011.

If Further Reform is Necessary, So Is Further Research, Data, and Evidence

- The IXCs have demanded reforms by misleading the FCC through their anecdotes, hypothesis, and hysteria, rather than current data and evidence:

Unsubstantiated Allegations	Available Evidence Shows
Access stimulation has become more widespread since 2011.	There has been a substantial decline in the volume of access stimulation traffic billed pursuant to tariff, thanks to CLECs voluntarily entering into IP-interconnection arrangements.
Access stimulation involves high switched access rates.	The CLECs' benchmarked rates are at or below the rates charged by the largest price cap ILEC, PacBell, an AT&T affiliate.
Access-stimulating LECs circumvent the FCC's rules by interposing intermediate providers.	There is no evidence showing the CLECs are violating the rules imposed by the *Connect America Fund Order*.
IXCs requested & were denied true direct connections.	IXCs have never requested true direct connections, but rather "virtual direct connections" through third-party carriers; IXCs now dismiss the direct connection proposal as something they desire.

Thank You

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